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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2010-464**

12 **ROSEMARIE SAN LUIS GUILLEN**
13 **7494 Carrollton Place**
Corona, CA 92880

14 **Registered Nurse License No. 711269**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 27, 2007, the Board of Registered Nursing issued Registered
23 Nurse License Number 711269 to Rosemarie San Luis Guillen (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on March 31, 2011, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code provides that each license not renewed shall expire but may within eight years be reinstated upon payment of fees and submission of proof of the applicant's qualifications as may be required by the Board.

STATUTORY PROVISIONS AND REGULATIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Section 2765 provides:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article....

1 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 9. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted
7 by a board within the department pursuant to law to deny an application for a license
8 or to suspend or revoke a license or otherwise take disciplinary action against a
9 person who holds a license, upon the ground that the applicant or the licensee has
10 been convicted of a crime substantially related to the qualifications, functions, and
11 duties of the licensee in question, the record of conviction of the crime shall be
12 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
13 the board may inquire into the circumstances surrounding the commission of the
14 crime in order to fix the degree of discipline or to determine if the conviction is
15 substantially related to the qualifications, functions, and duties of the licensee in
16 question.

17 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
18 and 'registration.'

19 10. Section 810 of the Code states:

20 (a) It shall constitute unprofessional conduct and grounds for disciplinary
21 action, including suspension or revocation of a license or certificate, for a health
22 care professional to do any of the following in connection with his or her
23 professional activities:

24
25 (2) Knowingly prepare, make, or subscribe any writing, with intent to
26 present or use the same, or to allow it to be presented or used in support of any
27 false or fraudulent claim.

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29 (d) As used in this section, health care professional means any person
30 licensed or certified pursuant to this division, or licensed pursuant to the
31 Osteopathic Initiative Act, or the Chiropractic Initiative Act.

32 11. Section 482 of the Code states:

33 Each board under the provisions of this code shall develop criteria to
34 evaluate the rehabilitation of a person when:

35 (a) Considering the denial of a license by the board under Section 480; or

36 (b) Considering suspension or revocation of a license under Section 490.

37 Each board shall take into account all competent evidence of
38 rehabilitation furnished by the applicant or licensee.

1 12. Title 16, California Code of Regulations, section 1444, states:

2 A conviction or act shall be considered to be substantially related to the
3 qualifications, functions or duties of a registered nurse if to a substantial degree it
4 evidences the present or potential unfitness of a registered nurse to practice in a
5 manner consistent with the public health, safety, or welfare. Such convictions or
6 acts shall include but not be limited to the following:

7 (a) Assaultive or abusive conduct including, but not limited to, those
8 violations listed in subdivision (d) of Penal Code Section 11160.

9 (b) Failure to comply with any mandatory reporting requirements.

10 (c) Theft, dishonesty, fraud, or deceit.

11 (d) Any conviction or act subject to an order of registration pursuant to
12 Section 290 of the Penal Code.

13 13. Title 16, California Code of Regulations, section 1445, subdivision (b), provides the
14 following criteria for evaluating the rehabilitation of a licensee as follows:

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16 (b) When considering the suspension or revocation of a license on
17 the grounds that a registered nurse has been convicted of a crime, the Board, in
18 evaluating the rehabilitation of such person and his/her eligibility for a license will
19 consider the following criteria:

20 (1) Nature and severity of the act(s) or offenses(s).

21 (2) Total Criminal record.

22 (3) The time that has elapsed since commission of the act(s) or
23 offenses(s).

24 (4) Whether the licensee has complied with any terms of parole,
25 probation, restitution or any other sanctions lawfully imposed against the licensee.

26 (5) If applicable, evidence of expungement proceedings pursuant to
27 Section 1203.4 of the Penal Code.

28 (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

25 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3
4 **FIRST CAUSE FOR DISCIPLINE**

5 (December 7, 2009 Conviction for Health Care Fraud)

6 15. Respondent is subject to disciplinary action under sections 490 and 2761(f) for
7 conviction of a crime that is substantially related to the qualifications, duties, and functions of a
8 registered nurse. The circumstances are as follows:

9 a. On or about December 7, 2009, in a criminal proceeding entitled *United States of*
10 *America v. Evelyn Tisoy, et al.*, in United States District Court for the Central District of
11 California, case no. CR 09- 00609-GAF-36, Respondent was convicted on her plea of guilty for
12 health care fraud in violation of 18 U.S.C. § 1347 as charged in Count 35 of the Indictment.

13 b. As a result of the conviction, Respondent was sentenced to three years probation, to
14 pay to the United States a special assessment of \$100 and to pay restitution in the total amount of
15 \$17,736.49 pursuant to 18 U.S.C. § 3663A.

16 c. The facts that led to the conviction were that the Grand Jury charged a number of
17 defendants, including Respondent, with participating in a scheme to defraud a health care benefit
18 program, namely Medi-Cal. According to the Indictment, the defendants would arrange to
19 provide private duty nursing services to Medi-Cal beneficiaries, including children and youths
20 who suffered from disabling conditions such as cerebral palsy or developmental delay and who
21 needed professional nursing assistance at home and at school. The defendants would provide
22 unlicensed nurses to visit the Medi-Cal beneficiaries at home and at school and to provide nursing
23 services, including administering medications, adjusting ventilators, and feeding through
24 gastronomy tubes.

25 d. The Indictment charges that the defendants would hire unlicensed nurses and others
26 to provide these services, knowing that the unlicensed nurses and others were not licensed in
27 California and that some of them had little or no medical training or background. The Indictment
28 further charges that the defendants used fraudulent methods to conceal the fact that the nurses

1 were unlicensed, including lying to parents or guardians of the disabled Medi-Cal beneficiaries
2 about the status of the unlicensed nurses and falsifying medical records. Per the Indictment, the
3 defendants submitted claims to Medi-Cal that falsely represented that services performed by the
4 unlicensed nurses had been performed by actual licensed LVNs. Specifically, the Indictment
5 charges that on or about April 30, 2007, Respondent submitted and caused to be submitted to
6 Medi-Cal, Claim No. 7120197404904 for alleged LVN services provided to a patient on
7 December 26, 2006.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct-Healthcare Fraud)

10 16. Respondent is subject to disciplinary action under section 2761(a) in that Respondent
11 committed health care fraud, as is more fully set forth in paragraph 15, above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (False or Fraudulent Claims-Healthcare Fraud)

14 17. Respondent is subject to disciplinary action under section 810(a)(2) in that
15 Respondent knowingly prepared, made, or subscribed writing(s), with the intent to present or use
16 them, or to allow them to be presented or used in support of any false or fraudulent claim(s) as is
17 more fully set forth in paragraph 15, above.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 711269, issued to
22 Rosemarie San Luis Guillen;

23 2. Ordering Rosemarie S. Guillen to pay the Board of Registered Nursing the reasonable
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions
25 Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 3/28/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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